

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLIVIA Y, et al

PLAINTIFFS

vs

CIVIL ACTION NO. 3:04cv251 TSL-FKB

PHIL BRYANT, as Governor of
the State of Mississippi, et al.

DEFENDANTS

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR ENTRY OF JUDGMENT**

Defendants respond to Plaintiffs' *Motion for Entry of Judgment* ("Plaintiffs' Motion"), as follows:¹

1. Through their motion [Dkt. No. 838], Plaintiffs have moved this Court for entry of final judgment against Defendants for non-payment of Plaintiffs' attorney fees of \$123,810 and further request that the Court order accrual of interest.
2. Defendants have already agreed to pay Plaintiffs' attorney fees of \$123,810 as noted in Plaintiffs' Unopposed Motion for Attorney Fees [Dkt. No. 810], and further reflected by the Agreed Order entered by the Court on October 1, 2018 [Dkt. No. 811]. The Office of Attorney General is seeking payment of Plaintiffs' attorney fees through the requesting of a deficit appropriation during the current legislative session which opened earlier this month. As a part of this process, the Attorney General's Office will be forwarding this week, a deficit appropriations request to both Appropriations Chairs and the Legislative Budget Office, requesting, among other things, funding to pay Plaintiffs' attorney fees.

¹ Due to the nature of this pleading, Defendants request relief from the requirement of filing a memorandum brief in support of Defendants' response.

3. The fact that the Attorney General's Office is seeking to pay Plaintiffs' counsel through a deficit appropriation in the current legislative session has been shared with Plaintiffs' counsel, as stated in Attorney Lowry's *Affidavit in Support of Motion for Entry of Judgment*. *See Affidavit in Support of Motion for Entry of Judgment*, Exhibit 1 of Plaintiffs' Motion, Paragraph 7 [Dkt. No. 838-1].

4. Throughout the entire history of Olivia Y, Plaintiffs' attorney's fees have been paid through deficit appropriations requested by and made available to the Attorney General's office, as exhibited by the legislation appropriating the funds over the life of *Olivia Y*. *See Legislative Appropriation Bills 2008-2018*, attached hereto as Exhibit "A".²

5. Defendants' and the Attorney General's position on paying Plaintiffs' attorney fees through legislative appropriation is in accordance with Mississippi law, which states that a "judgment or decree against the State shall not be satisfied except by an appropriation therefor by the legislature, and an execution shall not be issued against the State." *See* MISS. CODE ANN., Section 11-45-5.

6. For the above mentioned reasons, Defendants request the Court deny Plaintiffs' Motion and, further, deny any charges Plaintiffs might submit to Defendants that are related to Plaintiffs' Motion for Entry of Judgment.

² 2008 SB3051 Lines 234-240; 2009 HB 702 Lines 98-103; 2010 SB 495 Line 70; 2011 SB3085 Lines 65-70; 2012 HB1511 Lines 116-121; 2013 HB2904 Lines 46-57; 2014 HB1400 Lines 53-66; 2015 SB2837 Lines 209-222; 2016 SB2924 Lines 78-85; 2017 SB3015 Lines 46-53; 2018 HB1617 Lines 82-86.

RESPECTFULLY SUBMITTED, this the 23rd day of January 2019.

By: Kenya Key Rachal

OF COUNSEL:

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
Kenya Key Rachal (MSB #99227)
James L. Jones (MSB #3214)
Jake Adams (MSB #101538)
One Eastover Center - 100 Vision Drive, Suite 400
Jackson, MS 39211
Telephone: (601) 351-2400
Facsimile: (601) 351-2424

Harold E. Pizzetta, III
Special Assistant Attorney General
OFFICE OF THE MISSISSIPPI ATTORNEY GENERAL
P. O. Box 220
Jackson, MS 39205